

APPEAL NO. 020662
FILED MAY 1, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on February 5, 2002. The hearing officer resolved the disputed issues by concluding that the appellant's (claimant) compensable left knee injury sustained on _____, does not extend to and include an injury to the claimant's left wrist and low back, and that the claimant is not entitled to supplemental income benefits (SIBs) for the 15th quarter. The claimant appealed these determinations. No response was received from the respondent (carrier).

DECISION

Affirmed.

The parties stipulated that the claimant sustained a compensable injury on _____, with an impairment rating of 16%; that the claimant did not elect to commute any portion of the impairment income benefits; that the qualifying period for the 15th quarter was from August 5, 2001, through November 3, 2001; and that the 15th quarter of SIBs was from November 17, 2001, through February 18, 2002. Section 408.142(a) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102) set out the statutory and regulatory requirements for SIBs. At issue is whether the claimant met the good faith requirement of Section 408.142(a)(4).

The good faith requirement of Section 408.142(a)(4) may be met by complying with Rule 130.102(d)(2) and (4). Rule 130.102(d)(4) provides that an employee has acted in good faith if the employee has been unable to perform any type of work in any capacity, has provided a narrative report from a doctor which specifically explains how the injury causes a total inability to work, and no other records show that the injured employee is able to return to work. The hearing officer determined that the claimant did not offer a narrative that specifically explains how the injury causes a total inability to work and our review of the record reveals no such narrative.

Rule 130.102(d)(2) provides that an injured employee has made a good faith effort to obtain employment commensurate with his or her ability to work if the employee has been enrolled in, and satisfactorily participated in, a full-time vocational rehabilitation program sponsored by the Texas Rehabilitation Commission (TRC) during the qualifying period. The hearing officer determined that the claimant did not satisfactorily participate in a full-time vocational rehabilitation program sponsored by the TRC during the qualifying period for the 15th quarter of SIBs. Whether a claimant has made a good faith effort (pursuant to Rule 130.102(d)) to obtain employment is a question of fact for the hearing officer to resolve. This is also true regarding whether the claimant has satisfactorily participated in a TRC program. Upon review of the record, we conclude that the hearing officer's determination that the claimant is not entitled to SIBs for the 15th quarter is supported by the evidence, and that it is not so against the great weight and

preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Texas Workers' Compensation Commission Appeal No. 001360, decided July 27, 2000.

Some of the medical records in evidence state that the claimant's low back problems are a result of his compensable injury. However, some of the same medical evidence also discusses the fact that if the claimant loses weight, his symptoms will improve. A medical record from a required medical examination doctor, dated August 2, 2001, stated, "There is a lack of documentation of objective medical findings, objective medical data or neurological deficits to relate the degenerative changes of the lumbar spine or the continued left wrist pain as relating to or flowing from the compensable left knee injury of _____." With the evidence in conflict, it is the hearing officer who is the sole judge of the relevance and materiality of the evidence as well as the weight and credibility that is to be given to the evidence. Section 410.165(a). It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex Civ. App.-Amarillo 1974, no writ). This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). Consequently, we affirm the hearing officer's decision on the extent-of-injury issue.

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA** and the name and address of its registered agent for service of process is

**ROBERT PARNELL
8144 WALNUT HILL LANE #1600
DALLAS, TEXAS 75235.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Robert E. Lang
Appeals Panel
Manager/Judge